

MAY 4 1946

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 1202

W. D. HADEN COMPANY,

Petitioner,

vs.

**L. METCALFE WALLING, ADMINISTRATOR OF THE WAGE
AND HOUR DIVISION, UNITED STATES DEPARTMENT OF
LABOR.**

**PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT AND BRIEF IN SUP-
PORT THEREOF.**

W. P. HAMBLIN,
Counsel for Petitioner.



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CASES CITED

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STATUTES CITED

Fair Labor Standards Act of 1938, 52 Stat. 1060, 29 U. S. C. 201	9
Internal Revenue Code, Sec. 1426 (b) (5)	9
Judicial Code, Sec. 240 (a), as amended by Act of February 13, 1925	3
Social Security Act, 42 U. S. C., 1004, 1101 (b)	8

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Interpretative Bulletin No. 1, issued by Wage & Hour Division, U. S. Department of Labor	7
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Wage & Hour Release R-899, issued by Wage & Hour Division, U. S. Department of Labor, July 12, 1940	7

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L. METCALFE WALLING, ADMINISTRATOR OF THE WAGE
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**PETITION FOR WRIT OF CERTIORARI TO THE
CIRCUIT COURT OF APPEALS FOR THE FIFTH
CIRCUIT.**

*To the Honorable Chief Justice and Associate Justices of
the Supreme Court of the United States:*

Now Comes W. D. Haden Company, a Texas corporation, and prays that a writ of certiorari issue to the United States Circuit Court of Appeals for the Fifth Circuit to review its order, entered January 18, 1946, which reversed the judgment of the United States District Court for the Southern District of Texas, entered November 13, 1945, wherein respondent's application for injunction was denied,

and in support thereof would respectfully show unto the court:

Opinion Below

The opinion of the Court below appears on page 108 of the Record and is reported in 153 Fed. (2d) 196.

Brief Statement of Matter Involved

The petitioner, one of the large oyster shell distributors in the Texas and Louisiana Gulf coastal areas, operates dredge boats in Galveston Bay and other waters of the Gulf of Mexico, where shell is taken from the sea and transported to distributing plants by means of tugboats and barges. The employees on such dredge-boats live aboard them, eating and sleeping thereon. Although there are two (2) crews aboard, the employees sometimes all work for long hours, and at other times they are all idle for long hours, awaiting empty barges whose arrival at the dredge are governed by numerous circumstances including tides, etc. The employees receive shore leave for six (6) days out of each month, going ashore and returning therefrom by means of motor boats.

The respondent herein applied to the district court for an injunction to compel petitioner to keep the records and pay the wages required by the Fair Labor Standards Act as to its employees on its dredges. The trial court held that such employees are "seamen" and, therefore, exempt under Section 12 (a)(3) of the Fair Labor Standards Act. The Fifth Circuit Court of Appeals reversed and remanded this cause under the theory that, while such employees are "seamen," they are not "employed as seamen" within the meaning of the Act.

Jurisdiction

The jurisdiction of this court is invoked under Judicial Code, Section 240 (a) as amended by the Act of February 13, 1925, C. 229, Sec. 1 (28 U. S. C. Section 347 (a), 43 Stat. 938). The date of the order by the Circuit Court of Appeals for the Fifth Circuit Court of Appeals for the Fifth Circuit to be reviewed is January 18, 1946. A petition for rehearing was denied February 18, 1946.

The question involved is an important question of Federal Law, and, not having previously been decided by the Supreme Court, is one as to which certiorari should be granted, since the interpretation of this exemption under the Act affects large numbers of employers and employees in coastal and river areas of the United States.

In addition, there is now existing a conflict of Federal authorities on the applicability of the term "seamen" to dredge employees.

Question Presented

The only question presented to this court is the proper construction of the phrase "employed as seamen" under the Act, i.e., whether the Circuit Court correctly construed the meaning of the exemption by declaring that such class of employees, although "seamen," were not "employed as seamen."

WHEREFORE, petitioner prays that a writ of certiorari issue under the seal of this Honorable Court, directed to the Circuit Court of Appeals for the Fifth Circuit, commanding said court to certify and send to this court a full and complete transcript of the record and of the proceedings of the said Circuit Court of Appeals for the Fifth Circuit in the case numbered and entitled on its docket, No. 11302, L. Metcalfe Walling, Administrator of the Wage and Hour

Division, U. S. Department of Labor, Appellant, vs. W. D. Haden Company, Appellee, to the end that this cause may be reviewed and determined by this court as provided for by the statutes of the United States; and that the judgment herein of said Circuit Court of Appeals for the Fifth Circuit be reversed by the court and for such other relief as to this court may seem proper.

W. D. HADEN COMPANY,
By W. P. HAMBLIN,
Counsel for Petitioner.

Houston, Texas, May 4th, 1946.

